

**Proposed Regulatory Language
Committee I -- Loans**

Quick Fix: No

Origin: FED UP #17

Issue: Direct Loan - Rehabilitation of Loans

Regulatory Cite: 685.211(f)

Summary of Change: Rehabilitation of a defaulted Direct Loan provides for the removal of the default notation on a borrower's credit history after the borrower makes 12 consecutive on-time, reasonable, and affordable monthly payments. Currently, a borrower may rehabilitate a defaulted Direct Loan on which a judgment has been obtained. The proposed change to §685.211(f) would no longer allow a borrower to rehabilitate a defaulted Direct Loan on which a judgment has been obtained.

(1) Change (context):

§685.211 Miscellaneous repayment provisions.

* * * * *

(f) Rehabilitation of defaulted loans. A defaulted Direct Loan, except for a loan on which a judgment has been obtained, is rehabilitated if the borrower makes 12 consecutive on-time, reasonable, and affordable monthly payments. The amount of such a payment is determined on the basis of the borrower's total financial circumstances. If a defaulted loan is rehabilitated, the Secretary instructs any credit bureau to which the default was reported to remove the default from the borrower's credit history.

(2) Amendatory Language:

§685.211 [Amended]

Section 685.211(f) is amended by adding, in the first sentence, ", except for a loan on which a judgment has been obtained," after "Loan".

* * * * *

**Proposed Regulatory Language
Committee I - Loans**

Quick Fix: No

Origin: FED UP (not on 12/14/01 list)

Issue: Direct Loan - Entrance and Exit Counseling

Regulatory Cite: §685.304

Summary of Change: The proposed changes would (1) ensure consistency in counseling requirements across the three Title IV loan programs and (2) clarify that a party other than the school may provide the counseling.

(1) Change (context):

§685.304 Counseling borrowers.

(a) Initial counseling. (1) Except as provided in paragraph (a)(4) of this section, a school must ~~conduct~~ ensure that initial counseling is conducted with each Direct Subsidized or Direct Unsubsidized Loan borrower prior to making the first disbursement of the proceeds of a ~~Direct Subsidized or Direct Unsubsidized L~~ loan to a student borrower unless the student borrower has received a prior Direct Subsidized, Direct Unsubsidized, Federal Stafford, ~~Federal Unsubsidized Stafford,~~ or Federal SLS Loan.

(2) The initial counseling must be in person, by audiovisual presentation, or by interactive electronic means. In each case, the school must ensure that an individual with ~~knowledge of~~ expertise in the title IV programs is reasonably available shortly after the counseling to answer the student

borrower's questions. As an alternative, in the case of a student borrower enrolled in a correspondence program or a study-abroad program approved for credit at the home institution, ~~the school may provide the student borrower~~ may be provided with written counseling materials ~~prior to disbursing~~ before the loan proceeds are disbursed.

(3) ~~In conducting the~~ The initial counseling, ~~the school~~ must--

(i) Explain the use of a Master Promissory Note;

(ii) Emphasize to the borrower the seriousness and importance of the repayment obligation the student borrower is assuming;

(iii) ~~Describe in forceful terms~~ the likely consequences of default, including adverse credit reports, garnishment of wages, Federal offset, and litigation;

(iv) ~~Provide~~ Inform the student borrower ~~with general information with respect to~~ of the average anticipated monthly repayment amount based on the student borrower's anticipated indebtedness or on the average indebtedness of ~~student borrowers who have obtained Direct Subsidized or Direct Unsubsidized Loans~~ borrowers for attendance at that the same school or in the student borrower's same program of study at the same school;

(v) ~~Inform the student borrower as to the average anticipated monthly repayment for those student borrowers based~~

~~on the average indebtedness provided under paragraph (a)(3)(iv) of this section.~~

(v) Emphasize that the student borrower is obligated to repay the full amount of the loan even if the student borrower does not complete the program, is unable to obtain employment upon completion, or is otherwise dissatisfied with or does not receive the educational or other services that the student borrower purchased from the school.

(4) A school may adopt an alternative approach for initial counseling as part of the school's quality assurance plan described in §685.300(b)(9). If a school adopts an alternative approach, it is not required to meet the requirements of paragraphs (a)(1)-(3) of this section unless the Secretary determines that the alternative approach is not adequate for the school. The alternative approach must--

(i) Ensure that each student borrower subject to initial counseling under paragraph (a)(1) of this section is provided written counseling materials that contain the information described in paragraph (a)(3) of this section;

(ii) Be designed to target those student borrowers who are most likely to default on their repayment obligations and provide them more intensive counseling and support services; and

(iii) Include performance measures that demonstrate the effectiveness of the school's alternative approach. These

performance measures must include objective outcomes, such as levels of borrowing, default rates, and withdrawal rates.

(5) ~~A school that conducts~~If initial counseling is conducted through interactive electronic means, a school must take reasonable steps to ensure that each student borrower receives the counseling materials, and participates in and completes initial counseling.

(6) The school must maintain documentation substantiating the school's compliance with this section for each student borrower.

(b) Exit counseling. (1) A school must ~~conduct~~ensure that exit counseling is conducted with each Direct Subsidized or Direct Unsubsidized Loan borrower shortly before the student borrower ceases at least half-time study at the school.

(2) The exit counseling must be in person, by audiovisual presentation, or by interactive electronic means. In each case, the school must ensure that an individual with ~~knowledge of~~expertise in the title IV programs is reasonably available shortly after the counseling to answer the student borrower's questions. As an alternative, in the case of a student borrower enrolled in a correspondence program or a study-abroad program approved for credit at the home institution, ~~the school may provide~~ the student borrower may be provided with written

counseling materials within 30 days after the student borrower completes the program.

(3) If a student borrower withdraws from school without the school's prior knowledge or fails to complete the exit counseling as required, the ~~school must provide~~ exit counseling must be provided either through interactive electronic means or by mailing written counseling materials to the student borrower at the student borrower's last known address within 30 days after the school learns that the student borrower has withdrawn from school or failed to complete the exit counseling as required.

(4) ~~In conducting t~~^The exit counseling, ~~the school must--~~

(i) Inform the student borrower of the average anticipated monthly repayment amount based on the student borrower's indebtedness or on the average indebtedness of ~~student borrowers who have obtained Direct Subsidized or Direct Unsubsidized Loans~~ borrowers for attendance at that the same school or in the ~~student borrower's~~ same program of study at the same school;

(ii) Review for the student borrower available repayment options including the standard repayment, extended repayment, graduated repayment, and income contingent repayment plans, and loan consolidation;

(iii) ~~Provide options~~ Suggest to the student borrower concerning those debt-management strategies that the school determines would facilitate repayment by the student borrower;

(iv) Explain to the student borrower how to contact the party servicing the student borrower's Direct Loans;

(v) Meet the requirements described in paragraphs (a)(3) (i), (ii), and (iii), and (v) of this section;

(vi) Review ~~with~~ for the student borrower the conditions under which the student borrower may defer or forbear repayment or obtain a full or partial ~~cancellation~~ discharge of a loan;

(vii) Review ~~with~~ for the student borrower information on the availability of the Department's Student Loan Ombudsman's office; and

(viii) Inform the student borrower of the availability of title IV loan information in the National Student Loan Data System (NSLDS); and

~~(viii)~~ ix) Require the student borrower to provide ~~corrections to the school's records~~ current information concerning name, address, social security number, references, and driver's license number and State of issuance, as well as the student borrower's expected permanent address, the address of the student borrower's next of kin, and the name and address of the student borrower's expected employer (if known). ~~The~~

~~school must provide this information to the Secretary within 60 days.~~

(5) The school must ensure that the information required in paragraph (b)(4)(viii) of this section is provided to the Secretary within 60 days after the student borrower provides the information.

~~(5⁶) A school that conducts~~If exit counseling is conducted through interactive electronic means, a school must take reasonable steps to ensure that each student borrower receives the counseling materials, and participates in and completes exit counseling.

~~(6⁷)~~ The school must maintain documentation substantiating the school's compliance with this section for each student borrower.

(2) Amendatory Language:

Section 685.304 is amended:

A. By revising paragraphs (a)(1), (a)(2), and (a)(3).

B. In paragraph (a)(5), by removing "A school that conducts" and adding, in its place, "If"; by adding "is conducted" after the first occurrence of "counseling"; and by adding ", a school" after "means".

C. In paragraph (b)(1), by removing "conduct" and adding, in its place, "ensure that"; and by adding "is conducted" after "counseling".

D. In paragraph (b)(2), by adding, in the first sentence, "exit" after "The"; by removing, in the second sentence, "knowledge of" and adding, in its place, "expertise in"; by removing, in the third sentence, "the school may provide"; and by adding, in the third sentence, "may be provided" after the second occurrence of "borrower".

E. In paragraph (b)(3), by removing "school must provide"; and by adding "must be provided" after the second occurrence of "counseling".

F. By revising paragraph (b)(4).

G. By redesignating paragraphs (b)(5) and (b)(6) as (b)(6) and (b)(7) respectively.

H. By adding a new paragraph (b)(5).

I. In redesignated paragraph (b)(6), by removing "A school that conducts" and adding, in its place, "If"; by adding "is conducted" after the first occurrence of "counseling"; and by adding ", a school" after "means".

The revisions and addition read as follows:

§685.304 Counseling borrowers.

(a) Initial counseling. (1) Except as provided in paragraph (a)(4) of this section, a school must ensure that

initial counseling is conducted with each Direct Subsidized or Direct Unsubsidized Loan borrower prior to making the first disbursement of the proceeds of a loan to a student borrower unless the student borrower has received a prior Direct Subsidized, Direct Unsubsidized, Federal Stafford, or Federal SLS Loan.

(2) The initial counseling must be in person, by audiovisual presentation, or by interactive electronic means. In each case, the school must ensure that an individual with expertise in the title IV programs is reasonably available shortly after the counseling to answer the student borrower's questions. As an alternative, in the case of a student borrower enrolled in a correspondence program or a correspondence program or a study-abroad program approved for credit at the home institution, the student borrower may be provided with written counseling materials before the loan proceeds are disbursed.

(3) The initial counseling must--

(i) Explain the use of a Master Promissory Note;

(ii) Emphasize to the borrower the seriousness and importance of the repayment obligation the student borrower is assuming;

(iii) Describe the likely consequences of default, including adverse credit reports, garnishment of wages, Federal offset, and litigation;

(iv) Inform the student borrower of the average anticipated monthly repayment amount based on the student borrower's anticipated indebtedness or on the average indebtedness of Direct Subsidized or Direct Unsubsidized Loan borrowers at the same school or in the same program of study at the same school;

(v) Emphasize that the student borrower is obligated to repay the full amount of the loan even if the student borrower does not complete the program, is unable to obtain employment upon completion, or is otherwise dissatisfied with or does not receive the educational or other services that the student borrower purchased from the school.

* * * * *

(b) ***

(4) The exit counseling must--

(i) Inform the student borrower of the average anticipated monthly repayment amount based on the student borrower's indebtedness or on the average indebtedness of Direct Subsidized or Direct Unsubsidized Loan borrowers at the same school or in the same program of study at the same school;

(ii) Review for the student borrower available repayment options including the standard repayment, extended repayment, graduated repayment, and income contingent repayment plans, and loan consolidation;

(iii) Suggest to the student borrower debt-management strategies that would facilitate repayment;

(iv) Explain to the student borrower how to contact the party servicing the student borrower's Direct Loans;

(v) Meet the requirements described in paragraphs (a)(3)(i), (ii), (iii), and (v) of this section;

(vi) Review for the student borrower the conditions under which the student borrower may defer or forbear repayment or obtain a full or partial discharge of a loan;

(vii) Review for the student borrower information on the availability of the Department's Student Loan Ombudsman's office;

(viii) Inform the student borrower of the availability of title IV loan information in the National Student Loan Data System (NSLDS); and

(ix) Require the student borrower to provide current information concerning name, address, social security number, references, and driver's license number and State of issuance, as well as the student borrower's expected permanent address, the address of the student borrower's next of kin, and the name and address of the student borrower's expected employer (if known).

(5) The school must ensure that the information required in paragraph (b)(4)(viii) of this section is provided to the

Secretary within 60 days after the student borrower provides the information.

* * * * *